

Hearing:  
October 15, 1998

Paper No. 20  
SIMMS/md

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB

AUG 4, 99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Cooper Tire & Rubber Company

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Serial No. 74/671,275

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James E. Shlesinger of Shlesinger, Arkwright & Garvey, LLP  
for Cooper Tire & Rubber Company.

Won T. Oh, Trademark Examining Attorney, Law Office 104  
(Sidney Moskowitz, Managing Attorney)

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Before Simms, Cissel and Quinn, Administrative Trademark  
Judges.

Opinion by Simms, Administrative Trademark Judge:

Cooper Tire & Rubber Company (applicant) has appealed  
from the final refusal of the Trademark Examining Attorney  
to register the mark ENFORCER for automobile tires sold  
through large retail chains.<sup>1</sup> The Examining Attorney has  
refused registration under Section 2(d) of the Act, 15 USC

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<sup>1</sup> Application Serial No. 74/671,275, filed May 8, 1995, based  
upon applicant's allegation of a bona fide intent to use the mark  
in commerce.

§1052(d), on the basis of Registration No. 1,444,045, for the mark shown below for mufflers, exhaust pipes, tail pipes, shock absorbers and mounting hardware therefor, all for land vehicles.<sup>2</sup>

We affirm.

The Examining Attorney argues that the marks are substantially identical, the registered mark consisting of stylization insignificant enough to distinguish the marks. The Examining Attorney argues that where the respective marks are substantially the same, the relationship between the goods need not be as close to support a finding of likelihood of confusion. With respect to the goods, the Examining Attorney notes that applicant has conceded that the goods (mufflers, exhaust pipes, shock absorbers,

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<sup>2</sup> Registration No. 1,444,045, issued June 23, 1987, Sections 8 and 15 affidavit filed. The Examining Attorney also cited Registration No. 1,102,071, issued September 12, 1978, for the mark ENFORCER for shock absorbers. This registration, held by the same registrant, has since expired.

automobile tires) travel in the same channels of trade.<sup>3</sup> Concerning the consumers, the Examining Attorney argues that while the purchase of tires and replacement automotive parts is not an impulse purchase, this does not mean that the consumers are necessarily sophisticated purchasers. The Examining Attorney contends that care and attention will be paid to quality and price. The Examining Attorney also argues that any doubt must be resolved in favor of the registrant.

Applicant, on the other hand, argues that the registered mark is "laudatorily suggestive" of something which strengthens. With respect to the goods, applicant argues that the connection between tires and structural automobile parts is "too tenuous." In this regard, applicant states that its customers are automobile manufacturers, independent tire dealers and wholesale distributors, as well as large retail chains. Applicant argues that there is no evidence that ordinary consumers would buy shock absorbers, mufflers or other goods set

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<sup>3</sup> In this regard, see applicant's brief, 3,7, and the Pecoraro affidavit, 2.

With respect to these large retail chain outlets, it is customary for these retail outlets to sell mufflers, exhaust pipes, tail pipes, shock absorbers and mounting hardware therefore [sic], all for land vehicles as one product line.

forth in the registration. According to applicant, consumers would not be likely to believe that the manufacturer of shock absorbers or mufflers also makes tires because of the different manufacturing processes involved. Even though these goods may travel in the same channels of trade, applicant argues that that is an insufficient basis for finding likelihood of confusion. In addition, applicant has submitted the affidavit of its manager of product marketing (Pecoraro) attesting to the lack of instances of actual confusion since use commenced in August 1995. Applicant has also made of record third-party registrations covering essentially the same mark (ENFORCER) owned by different entities covering such goods as anti-theft alarms and radar detectors. In this connection, applicant argues that the existence of these and numerous other third-party registrations of various marks for tires on the one hand and automobiles and/or structural or replacement parts therefor on the other issued to different entities suggests that consumers are conditioned to distinguish the source of tires from the source of structural or replacement parts made by others.

In response, the Examining Attorney argues that the third-party registrations for the mark ENFORCER cover specialized electronic accessories likely to be sold in

electronic stores rather than automotive stores. The Examining Attorney also argues that the third-party registrations issued to different entities are not evidence of what happens in the marketplace or that the public is familiar with those registered marks. Concerning the lack of instances of actual confusion, the Examining Attorney contends that applicant's use for only about two years is an insufficient basis on which to conclude that confusion is unlikely.

Upon careful consideration of this record and the arguments of the attorneys, we agree with the Examining Attorney that confusion is likely. The marks here are substantially identical and, because these goods (tires and mufflers, exhaust pipes, shock absorbers, etc.) concededly travel in the same channels of trade, we believe that the Examining Attorney has made out a prima facie case that confusion is likely. We believe that consumers, aware of registrant's ENFORCER mufflers, shock absorbers, exhaust pipes, etc. sold in the automotive departments of large general retail merchandisers (such as Sears and Pep Boys) who then encounter applicant's ENFORCER automobile tires in those same stores, are likely to believe that these goods come from the same source or are sponsored or endorsed by the same entity. See, for example, *In re Jeep Corporation*,

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222 USPQ 333 (TTAB 1984) and cases cited therein. See also In re Uniroyal, 177 USPQ 29 (TTAB 1973) (KODIAK for tires v. KODIAK for automobile heaters and KODIAK and design for antifreeze) and In re Red Diamond Battery Co., 203 USPQ 472 (TTAB 1979) (RED DIAMOND for storage batteries v. DIAMOND for tires). Compare In re Dayco Products-Eaglemotive Inc., 9 USPQ2d 1910 (TTAB 1988) (involving the mark IMPERIAL). Finally, the Examining Attorney is correct that any doubt must be resolved in favor of the prior user and registrant.

Decision: The refusal of registration is affirmed.

R. L. Simms

R. F. Cissel

T. J. Quinn  
Administrative Trademark  
Judges, Trademark Trial  
and Appeal Board